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Date:	24 OCT 2003
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Your Reference: P33587GB1/TF/LJP
Application No: GB 0313086.1

**The Patent Office
Patents Directorate**

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17 October 2003

Dear Sirs

**Patents Act 1977:
Combined Search and Examination Report under Sections 17 and 18(3)**

Latest date for reply: 7 June 2004

I enclose two copies of my search and examination report and a copy of the citations.

By the above date you should either file amendments to meet the objections in the report or make observations on them. If you do not, the application may be refused.

Publication

I estimate that, provided you have met all the formal requirements, preparations for publication of your application will be completed soon after **18 November 2003**. At this time you will receive a letter confirming the exact date when the preparations for publication will be completed. This letter will also tell you the publication number and date of publication of your application.

**CERTIFIED COPY OF
PRIORITY DOCUMENT**

[†]Use of E-mail: Please note that e-mail should be used for correspondence only.



Withdrawal/amendment

If you wish to withdraw your application before it is published you must do so before the preparations for publication are complete. **WARNING** - after preparations for publication are complete it will NOT be possible to withdraw your application from publication.

If you wish to file amended claims for inclusion with the published application you must do so before the preparations for publication are completed. If you write to the Office less than 3 weeks before 18 November 2003 please mark your letter prominently:

"URGENT - PUBLICATION IMMINENT".

Yours faithfully

Dr William Thomson
Examiner

Important information about combined search and examination

I also ask that you take note of the following points. These might have a bearing on the future stages of your application because the examination report has been sent to you before your application has been published.

- (a) You may file voluntary amendments before making a full response to my examination report. We will publish with your application any new or amended claims you file voluntarily or as a full response, provided that they are received before preparations for publication are completed. It would help us when you file amendments before publication if you could prominently indicate in a covering letter whether or not the amendments are intended as a full response to the examination report.
- (b) If you file a full response to the examination report before your application is published I will consider it as soon as possible. However, if this would disrupt the publication of your application, I would have to delay taking any action until the application had been published. This delay could be up to 3 months, depending upon when we receive your response.
- (c) There is another situation when there might be a delay between you filing a full response and the Patent Office responding to it. This would arise if you met all my objections but your application had not or had only recently been published. I could not report the outcome of my re-examination until I was satisfied that the search was complete for documents published before the priority date of your invention and that anybody interested in the application has had three months following publication of the application to make observations on the patentability of your invention.
- (d) Provided that the requirements of the Act have been met, I can send your application to grant as early as three months after publication. Before doing so I will bring the original search up to date and raise with you any further objection that might result from this top-up search. However, there is a possibility that at that time I may not have access to all the patent applications published after the priority date of your invention and of possible relevance to your application. If this is the case I would have to complete the search after grant and if necessary raise any new found novelty objection then.



Application No: GB 0313086.1
Claims searched: 1-20

Examiner: Dr William Thomson
Date of search: 17 October 2003

Patents Act 1977 : Search Report under Section 17

Documents considered to be relevant:

Category	Relevant to claims	Identity of document and passage or figure of particular relevance	
X	1-20	EP 0904784A1	(N.V. NUTRICIA) See whole document, in particular column 8, line 27-33, Examples 6-8 and claims 1-3 and 14
X	1-20	WO 97/35596A1	(ABBOT LABORATORIES) See whole document, in particular page 4, line 17 - page 5, line 1 and claims 1-13
X	1-20	WO 01/58465A3	(G. REID et al) See whole document, in particular page 6, line 18 - page 8, line 15 and page 8, lines 26-29
X	1-20	WO 01/098516A3	(REGENTS OF THE UNIVERSITY OF MINNESOTA) See whole document, in particular page 13, line 33 to page 14, line 18, the Examples and claims 9 and 14

Categories:

X	Document indicating lack of novelty or inventive step	A	Document indicating technological background and/or state of the art.
Y	Document indicating lack of inventive step if combined with one or more other documents of same category.	P	Document published on or after the declared priority date but before the filing date of this invention.
&	Member of the same patent family	E	Patent document published on or after, but with priority date earlier than, the filing date of this application.

Field of Search:

Search of GB, EP, WO & US patent documents classified in the following areas of the UKC⁶:

A5B

Worldwide search of patent documents classified in the following areas of the IPC⁷:

A61K

The following online and other databases have been used in the preparation of this search report:

CAS-ONLINE, EPODOC, JAPIO, TXTE & WPI



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Applicant: Mars Incorporated

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Patents Act 1977

Combined Search and Examination Report under Sections 17 & 18(3)

Novelty - Section 2(1)/2(2)

1. The invention as defined in claims 17-19 is not new because it has already been disclosed in each of the following documents:
 - (a) EP 0904784A1 (N.V.NUTRICIA); vs claims 1-20; See whole document, in particular column 8, line 27-33, Examples 6-8 and claims 1-3 and 14.
 - (b) WO 97/35596A1 (ABBOT LABORATORIES); vs claims 1-20; See whole document, in particular page 4, line 17 - page 5, line 1 and claims 1-13.
 - (c) WO 01/58465A2 (G. REID et al); vs claims 1-20; See whole document, in particular page 6, line 18 - page 8, line 15 and page 8, lines 26-29.
 - (d) WO 01/098516A3 (REGENTS OF THE UNIVERSITY OF MINNESOTA); vs claims 1-20; See whole document, in particular page 13, line 33 to page 14, line 18, the Examples and claims 9 and 14.

2. The above four documents disclose a range of probiotic microorganisms suitable for use in the treatment of *Campylobacter*. Thus the first medical use of such material is not novel.

Inventive step - Section 3

3. The invention as defined in claims 1-16 and 20 is obvious in view of what has already been disclosed in the following documents:
 - (a) EP 0904784A1 (N.V.NUTRICIA); vs claims 1-16 and 20; See whole document, in particular column 8, line 27-33, Examples 6-8 and claims 1-3 and 14.
 - (b) WO 97/35596A1 (ABBOT LABORATORIES); vs claims 1-16 and 20; See whole document, in particular page 4, line 17 - page 5, line 1 and claims 1-13.
 - (c) WO 01/58465A2 (G. REID et al); vs claims 1-16 and 20; See whole document, in particular page 6, line 18 - page 8, line 15 and page 8, lines 26-29.



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[Examination Report contd.]

Inventive step (cont'd)

(d) WO 01/098516A3 (REGENTS OF THE UNIVERSITY OF MINNESOTA); vs claims 1-16 and 20; See whole document, in particular page 13, line 33 to page 14, line 18, the Examples and claims 9 and 14.

4. Documents (a)-(d) clearly suggest to the skilled person that probiotic microorganisms such as *Lactobacillus* or *Bifidobacteria* may be used in a medicament to prevent or reduce gastrointestinal infection by *Campylobacter*.

Patentability - Section 4(2)

5. Claims 8-16 and 20 relate to a method of treatment of the human/animal body. As such, the said claims are forbidden under Section 4(2) of the 1977 Patents Act. Amendment to remove the aforementioned claims will be required.

Consistency - Section 14(5)(b)

6. To be consistent with the description at page 5, line 14, the term "according to a first aspect" should be placed in the description at page 2, lines 24 - to replace "accordingly".